



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR2010-14066

Dear Mr. Ernst:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393612.

The City of Dallas (the "city") received a request for a specified real estate appraisal of property belonging to the requestor's clients. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code and privileged under rule 192.3 of the Texas Rules of Civil Procedure.¹ We have considered your arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, the submitted information is an appraisal report subject to section 552.022 of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.111 of the Government Code is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000)

¹Although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure, but a list of categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

(discretionary exceptions generally). Accordingly, the city may not withhold the appraisal report under section 552.111. However, the attorney work product privilege is also found at rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" that makes information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider whether the city may withhold the report under rules 192.3 and 192.5 of the Texas Rules of Civil Procedure.

Next, we consider the requestor's claim the information at issue should be released to him based on section 21.0111(a) of the Property Code. Section 21.0111(a) provides as follows:

A governmental entity with eminent domain authority that wants to acquire real property for a public use shall disclose to the property owner at the time an offer to purchase is made any and all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer.

Prop. Code § 21.0111(a). This provision expressly requires a governmental body with eminent domain authority to furnish, at the time it makes an offer to purchase property, "any and all existing appraisal reports . . . used in determining the final valuation offer" to the property owner. *Id.* The Supreme Court of Texas has stated chapter 21 of the Property Code "must be strictly followed and its protections liberally construed for the benefit of the landowner." *John v. State*, 826 S.W.2d 138, 140 (Tex. 1992). Thus, we believe each appraisal produced or acquired by the city during the appraisal process, "relating specifically to the owner's property," is "used in determining the final valuation offer" made to the property owner.

The requestor represents the property owners whose property is the subject of the requested appraisal report. You assert the requested appraisal report was not used in determining the final valuation offer. However, you also state the city has obtained appraisals on the property, which the city is in the process of acquiring by its power of eminent domain. You state that "[b]ecause the subject appraisal report was prepared in contemplation of acquiring land by condemnation, the report was prepared in anticipation of litigation." The request indicates the city disclosed one appraisal report to the requestor and offered to purchase the property in a letter dated June 8, 2010. The appraisal at issue is dated September 19, 2009. Upon review, we find the submitted appraisal report relates specifically to the owners' property, was produced or acquired by the city during the appraisal process, and was used in determining the final valuation offer made to the property owner. Therefore, the submitted appraisal report must be released to the property owners pursuant to section 21.0111 of the Property Code. In this instance, the requestor is the attorney for the property owners.

You seek to withhold the submitted information under the consulting expert privilege found in rule 192.3(e) of the Texas Rules of Civil Procedure and under the work product privilege

found in rule 192.5 of the Texas Rules of Civil Procedure. A party to litigation is not required to disclose the identity, mental impressions, and opinions of consulting experts whose mental impressions or opinions have not been reviewed by a testifying expert. See TEX. R. CIV. P. 192.3(e). A "consulting expert" is defined as "an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert." TEX. R. CIV. P. 192.7. For the purpose of section 552.022, information is confidential under rule 192.5 only to the extent the information implicates the core work product aspect of the work product privilege. ORD 677 at 9-10. Core work product is defined as the work product of an attorney or an attorney's representative developed in anticipation of litigation or for trial that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories. TEX. R. CIV. P. 192.5(a), (b)(1).

However, even assuming rule 192.3 or rule 192.5 applies, section 21.0111 is a more specific provision. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. See Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 598 (1991) (statutes governing access to specific subset of information held by governmental body prevail over generally applicable Act), 478 (1987) at 2-3 (Act does not govern special rights of access granted under other statutes), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor, in this instance, has a statutory right of access to the submitted information under section 21.0111, the city may not withhold the information at issue under rule 192.3 or rule 192.5 of the Texas Rules of Civil Procedure. Therefore, the submitted information must be released to the requestor as mandated by section 21.0111 of the Property Code.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

²Should the city receive another request for this information from a person who is not an owner of the property at issue or a representative of an owner, the city should resubmit this same information and request another decision.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mack T. Harrison", with a long horizontal flourish extending to the right.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 393612

Enc. Submitted documents

c: Requestor
(w/o enclosures)